

REMARKS

The Office Action

Claims 1, 3, 5, 12, 13, 36, 38, and 39 stand rejected as being anticipated by Brines (US2003/0104988). Claims 6 and 40 stand rejected as being obvious over Brines in view of Bhaskaran (US2004/0136952). Claims 36-40 stand rejected as containing new matter. Claim 36 stands rejected for indefiniteness. Each of these rejections is addressed in turn.

Support for the Amendments

Claim 36 has been amended to recite a method for healing of burn wounds in an individual using a skin graft by topically applying erythropoietin (EPO) to the skin graft or wound, and then applying the skin graft to the wound. Support for this amendment is found at paragraphs [0175], [0179], and [0185]. Paragraph [0175], for example, states that “[b]iological implants (vessels, heart valves, skin) and membranes can...be coated with EPO.” Support for new claims 38-40 is found in original claims 3, 5, and 6. Support for new claims 41-44 is found at paragraph [0179], which states that “[p]oorly healing wounds are coated in accordance with the invention with EPO...after preparation of the wound bed. To this end, a mechanical debridement is preferably carried out. 10,000 IU of EPO are introduced into the blood coagulum.” No new matter has been added.

Interview Summary

Applicant thanks Examiners DeBerry and Allen for their time and consideration in connection with the telephonic interview between them and the undersigned. During the interview, the parties discussed Brines as prior art as well as support for the amended claims. With respect to a proposed amendment to claim 36 to specify the use of a skin graft, the Examiners agreed that Brines did not appear to teach the use of a skin graft.

Rejections Under 35 U.S.C. § 102(e)

Claims 1, 3, 5, 12, 13, 36, 38, and 39 stand rejected as being anticipated by Brines. According to the Office, Brines teaches the use of EPO to treat various injuries, diseases, and

disorders, including those recited in the claims. Without assenting to the Office's characterization of the teachings of Brines, Applicant cancels claims 1, 3, 5, 12, 13, and 38, but reserves the right to pursue these claims in this or a continuation application. Applicant addresses the rejection with respect to amended claims 36 and 39.

For a reference to anticipate a claim, the reference must teach every limitation of that claim. Because Brines does not teach every limitation of amended claim 36, this reference cannot anticipate this claim or its dependent claim.

Amended claim 36 is directed to a method for healing of burn wounds in an individual using a skin graft by topically applying EPO to the skin graft or to the wound, and then applying the skin graft to the wound. Quite simply, Brines fails to teach the use of EPO or any other compound in combination with a skin graft to heal burn wounds. Because Brines fails to disclose every limitation of amended 36, the rejection of claim 36 (and its dependent claim) should be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 6 and 40 stand rejected as being obvious over Brines in view of Bhaskaran. Applicant has cancelled claim 6, and this rejection is now moot. Regarding claim 40, the failure of Brines to anticipate claim 36 (from which claim 40 depends) is discussed above. Bhaskaran is relied upon by the Office solely to teach an element of claim 40 that the Office concedes is not by Brines: the use of a pegylated form of EPO. Bhaskaran does not remedy the deficiencies of Brines, as it too fails to teach or suggest a method for healing of burn wounds in an individual using a skin graft by topically applying EPO to the skin graft, as is required by claim 40. Thus, because no combination of the cited art teaches or suggests every limitation of claim 40, the rejection of this claim as being obvious should be withdrawn.

Rejections Under 35 U.S.C. § 112, first paragraph

Claims 36-40 stand rejected for containing new matter. Claims 37 and 38 have been cancelled. Claims 36 and 40 have been amended to remove the phrase “without the occurrence

of scarring”) and to specify that the factor is EPO. Accordingly, this rejection may now be withdrawn.

Rejections Under 35 U.S.C. § 112, second paragraph

Claim 36 stands rejected for indefiniteness. According to the Office, the phrase “without the occurrence of scarring” lacks sufficient metes and bounds. Claim 36 has been amended to remove this phrase, and this rejection may now be withdrawn.

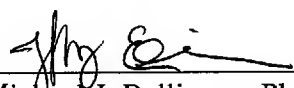
Conclusion

Applicant submits that the claims are in condition for allowance, and such action is respectfully requested. Transmitted herewith is a Petition to extend the period for replying to the Office action for three months, to and including May 3, 2010.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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